

United Plastics, Inc. and David J. Hanley. Case 33-
CA-4188

May 28, 1982

SUPPLEMENTAL DECISION AND
ORDER

BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN

On March 23, 1981, the National Labor Relations Board issued its Decision and Order¹ in the above-entitled proceeding finding, *inter alia*, that the Respondent had violated Section 8(a)(3) and (1) of the National Labor Relations Act, as amended, by discharging employee David J. Hanley. Thereafter, before commencing enforcement proceedings, the Board decided *sua sponte* to reconsider its decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reconsidered its decision in light of the entire record and has decided to affirm its Decision and Order as herein amplified.

The issue is whether or not employee Hanley was discharged because he engaged in protected activity or, as contended by the Respondent, because he failed to perform his work. As set forth below, we find that Hanley was discharged because he engaged in protected activity and that the Respondent violated Section 8(a)(3) and (1) of the Act.

The Administrative Law Judge found that Hanley had failed to perform certain work. However, he also found that when fellow employee Enrique Calle asked Hanley why the work was not done Hanley mentioned either that he had a union card or that he was a member of a union. This statement, along with the fact that the work was not completed, was conveyed to the Respondent's president, B. Bryan Smith. Smith told Calle he wanted Hanley discharged. Later that day Melvin Workman, the Respondent's plant manager, contacted Smith. Smith asked Workman if he had heard about Hanley's having a union card and not wanting to perform certain work. Smith said that if a union came in he would close the plant or move it. Smith also told Workman to shut down the machine Hanley was scheduled to operate because of his remarks about the union card. When Hanley reported for work, he was told his machine was not going to be in operation and to report to Smith's office Monday morning.

According to Workman's credited testimony, when Hanley went to Smith's office, Smith accused him of making remarks about a union and not performing his work. Hanley stated that he thought he had completed his work and he denied making any statement about unions.² Smith then, addressing only the union issue, told Hanley that if a union ever came into the plant he would close down or move. Even after Hanley had been discharged Smith continued to be obsessed with Hanley's union involvement. Thus, he immediately questioned Workman about Hanley's union remarks. When Workman replied that he believed Hanley did make the remarks, Smith went into a tirade against unions and once again stated that if a union tried to organize his plant he would close it down or move. Even when Workman said that this could be illegal, Smith said he would find a way.

We also note that during the proceeding the Respondent relied on divergent reasons for Hanley's discharge. Thus, at one point the Respondent asserted that Hanley was not discharged but merely laid off as a result of a decrease in production, however, the record does not support this assertion.

Based on the foregoing, we find that the Respondent discharged Hanley, not because he failed to perform his work, but because it believed he was a union adherent. While the reason for the discharge put forth by the Respondent did exist, it was not, in fact, relied on by the Respondent in arriving at its decision to discharge Hanley. Thus, Smith, when discharging Hanley, initially mentioned only Hanley's failure to complete his work assignment. Smith's repeated and vehement statements to both Hanley and Workman concerning Hanley's union involvement, along with his other antiunion statements, lead us to conclude that Hanley's one instance of failing to finish his work assignment was a mere pretext put forth by the Respondent to justify what was in fact a discharge because Hanley engaged in protected activity.³

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby affirms its original Decision and Order in this proceeding and orders that the Respondent, United Plastics, Inc., Champaign, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the Board's original Order (255 NLRB 178).

² As previously indicated, the Administrative Law Judge specifically found that Hanley did make the remarks.

³ See *Limestone Apparel Corp.*, 255 NLRB 722 (1981).

¹ 255 NLRB 178.